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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

- - - - -	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CRIMINAL CASE NO.
	)	2:09cr00070
v.	)	
	)	
SHAWN F. ENGLE,	)	
	)	
Defendant.	)	
- - - - -		

TRANSCRIPT OF PROCEEDINGS  
(Withdrawal of Guilty Plea)  
  
Norfolk, Virginia  
  
October 8, 2009

BEFORE: THE HONORABLE ROBERT G. DOUMAR,  
United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE  
By: Robert J. Krask, Esquire  
Assistant United States Attorney  
Counsel for the United States

FEDERAL PUBLIC DEFENDER'S OFFICE  
By: Richard J. Colgan, Esquire  
Assistant Federal Public Defender  
Counsel for the Defendant

1 (The hearing commenced at 10:00 a.m.)

2 THE CLERK: Criminal Case No. 2:09cr70, the United  
3 States of America v. Shawn F. Engle, also known as Shawn  
4 Forrest Engle.

5 Mr. Krask, is the government ready to proceed?

6 MR. KRASK: The United States is ready. Good  
7 morning.

8 THE CLERK: Mr. Colgan, is the defendant ready to  
9 proceed?

10 MR. COLGAN: Good morning, Judge. The defendant is  
11 ready.

12 THE COURT: Mr. Colgan, this is on your client's  
13 motion to withdraw his plea of guilty.

14 MR. COLGAN: Yes, sir, Judge.

15 THE COURT: How are we set for Speedy Trial Act  
16 problems, which is important to me, Mr. Krask? We've got two  
17 motions pending. Besides that we have -- so we've got to get  
18 these motions heard, now that he's not going to plead guilty.  
19 Let me make sure of that. I want to have him state so in  
20 open court, Mr. Colgan. I want to speak with him so we'll  
21 see where we go.

22 Have you looked at the Speedy Trial Act  
23 implications, Mr. Krask?

24 MR. KRASK: I have, Your Honor. 30 days have run  
25 thus far. There are 40 days remaining on the clock. The

1 clock is not running because the motions have been pending.

2 THE COURT: All right. The clock still isn't  
3 running because the motions still are pending.

4 MR. KRASK: That's correct.

5 THE COURT: So we'll see where we go.

6 All right, Mr. Colgan, I'd like to hear from Mr. --  
7 do you pronounce your name Karner? Kerner? How do you  
8 pronounce your name?

9 THE DEFENDANT: Shawn Forrest Engle.

10 THE COURT: Oh, Engle. That's right. Excuse me.

11 All right, Mr. Engle. My understanding is you  
12 desire to withdraw your plea of guilty. Is that correct,  
13 sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, have you discussed this thoroughly  
16 with your counsel, Mr. Colgan?

17 THE DEFENDANT: I have.

18 MR. KRASK: Your Honor, under the circumstances can  
19 I request that the defendant be sworn in?

20 THE COURT: Would you please swear the defendant.  
21 That's all right, you don't need a Bible.

22 Would you please raise your right hand, Mr. Engle.  
23 Do you swear the testimony you are about to give in this  
24 matter is the truth, the whole truth, and nothing but the  
25 truth, so help you God?

1           THE DEFENDANT: Yes, sir.

2           THE COURT: All right, Mr. Engle. Now, Mr. Engle,  
3 tell me, have you gone over this matter thoroughly with your  
4 counsel, Mr. Colgan?

5           THE DEFENDANT: I have.

6           THE COURT: Now, you understand that Mr. Colgan has  
7 made some agreement with the prosecution which Mr. Colgan  
8 might feel is beneficial to your position but which you do  
9 not feel is beneficial to your position. Is that correct?

10          THE DEFENDANT: That is correct, Your Honor.

11          THE COURT: So, consequently, has he also explained  
12 to you the consequences if you are found guilty of what the  
13 sentence might be?

14          THE DEFENDANT: Yes, Your Honor, he has.

15          THE COURT: Do you understand that the sentence will  
16 probably be, if you were found guilty of all of these  
17 charges, a great deal more than what you would get if you  
18 pled guilty?

19          THE DEFENDANT: I do, Your Honor.

20          THE COURT: And, so, you still want to have a trial  
21 by a jury?

22          THE DEFENDANT: Yes, sir.

23          THE COURT: And you want to withdraw your plea of  
24 guilty?

25          THE DEFENDANT: Yes, sir.

1           THE COURT: And you've thought about this for some  
2 time. Is that correct?

3           THE DEFENDANT: Yes, I have, sir.

4           THE COURT: All right. I don't see how I have a  
5 whole lot of choice here, Mr. Krask, unless you have some  
6 good reason why he should not be able to withdraw his plea of  
7 guilty.

8           MR. KRASK: Your Honor, would the Court just inquire  
9 of the defendant and make sure that he understands that if  
10 the Court grants the motion that the defendant cannot come  
11 back later and say that he wants to accept this plea  
12 agreement and expect that he would receive the same sentence  
13 if, in fact, he was convicted at trial?

14          THE COURT: Well, he may not be able to, but I don't  
15 know. Mr. Colgan is an excellent attorney, and I can  
16 understand that you would be put to some expense. I may not  
17 agree later to allow him to plead guilty, but I don't want to  
18 say to somebody I'm going to deny them the right to plead  
19 guilty.

20          MR. KRASK: Maybe I misspoke, Your Honor. What I  
21 meant is that the United States will not be offering him a  
22 plea agreement with these terms again, and Mr. Engle needs to  
23 understand that.

24          THE COURT: Do you understand, Mr. Engle, that the  
25 government has made certain commitments in your plea

1 agreement for you to enter a plea of guilty?

2 THE DEFENDANT: Yes.

3 THE COURT: And that they will not make those  
4 commitments in the future when you withdraw your plea. Do  
5 you understand that?

6 THE DEFENDANT: Yes, sir, I completely understand  
7 that.

8 THE COURT: All right. Then the plea of guilty is  
9 withdrawn. What have we got for dates to -- first for the  
10 various motions that are pending and then the trial date?  
11 What have we got there, Lori?

12 THE CLERK: Your Honor, they talked about possibly  
13 Monday, October 26th as a possible date for a motion hearing.

14 THE COURT: Was there any problem with that?

15 THE CLERK: Both counsel have agreed to that date.

16 THE COURT: What do we have on October 26th?

17 THE CLERK: We have nothing scheduled, Your Honor.

18 THE COURT: Okay, then let's go. October 26th for  
19 the motion hearings. Is that agreeable with you, Mr. Colgan?

20 MR. COLGAN: Judge, I am available that day. I  
21 should bring to the Court's attention, though, that Mr. Engle  
22 has this morning informed me that he would like new counsel  
23 appointed to represent him in this matter.

24 THE COURT: Well, he's not going to get new counsel  
25 appointed to represent him, Mr. Colgan. You know, these

1 people start thinking -- and, unfortunately, Mr. Engle, I've  
2 appointed excellent counsel, a person who has tried many  
3 matters in this Court. He does an excellent job. I can  
4 understand you may want another lawyer because you don't  
5 agree with the advice your lawyer has given you, but I'm not  
6 going to give you another lawyer. Mr. Colgan is capable of  
7 doing an excellent job and will do an excellent job for you.  
8 If you don't want him, I'm sorry.

9           You can hire anybody you like, Mr. Engle. You could  
10 hire -- you know, you might find some rich lawyer in  
11 Washington, D.C. you could hire for about \$25,000 or \$50,000.  
12 There are some around here you can hire for \$25,000, I think.  
13 So I'm more than willing to have you hire anybody you like,  
14 but you don't have a lot of choice when the Court is left to  
15 appoint a lawyer. I'm going to appoint someone who is  
16 capable and able, and Mr. Colgan is. He's practiced before  
17 this Court numerous times.

18           And, so, consequently you can make all kinds of  
19 motions you want, Mr. Engle, but let me tell you something.  
20 Make sure you understand the nature and consequences of your  
21 actions. For every action there is a reaction. For every  
22 force there is an equal opposing opposite force. And that's  
23 what nature tells us, so understand that.

24           But understand you're getting a good lawyer. You  
25 don't have to follow his advice, but at least he can advise

1     you. Do you understand that?

2             THE DEFENDANT: Yes, sir.

3             THE COURT: And I just want to tell you that. I'm  
4 going ahead and we're going to have this hearing on the  
5 motions that are now pending, and we'll deal with those.  
6 Then subsequently we'll have a trial in this matter.

7             And when is the trial date set?

8             THE CLERK: There is no trial date set currently,  
9 Your Honor. I have some possible trial dates for you.

10            THE COURT: Oh, I see. How about December 1st?

11            MR. COLGAN: Judge, Mr. Dash is trying this case  
12 with me. He's on leave today, but I spoke with him last  
13 night, and he informed me that he has trials every week set,  
14 and most of them he thinks -- or at least some of them are  
15 actually going to go to trial between November 15th and  
16 December 15th, and, so, we would ask for something after  
17 December 15th, if the Court --

18            THE COURT: Mr. Colgan, why does Mr. Dash have to  
19 get into this case with you?

20            MR. COLGAN: Judge, it's a case with great exposure.  
21 There are multiple counts, different -- and the cases are  
22 divided up by, basically, two separate geographic areas, and  
23 we felt that our efforts as an office, as a team, would be  
24 better on behalf of Mr. Engle if we could have co-counsel in  
25 the case.



1           THE COURT: What do you say about all this,  
2 Mr. Krask?

3           MR. KRASK: Well, the speedy trial clock would  
4 conclude on December 11th if the Court rules on the motions  
5 on October 26th, so going past that date is not --

6           THE COURT: I can't very well go past that date,  
7 Mr. Colgan, and I'm not about to deny Mr. Engle a speedy  
8 trial. He's entitled to a speedy and public trial by jury.

9           I'm going to set it for December 1st, Mr. --

10          MR. COLGAN: Judge, can I just check my book to make  
11 sure that I --

12          THE COURT: All right, Mr. Colgan. I don't  
13 generally appoint or have two counsel in any non-capital  
14 case. This isn't a capital case.

15          MR. COLGAN: Judge, I have that date available.

16          THE COURT: All right. December 1st, 10:00 a.m. In  
17 the meantime, Mr. Colgan, if you have any problems please  
18 contact me. I will consider appointing another counsel with  
19 you, but I'm not relieving you by any manner or means,  
20 Mr. Colgan.

21          MR. COLGAN: Well, Judge -- and let me, if I might,  
22 just address that point with the Court.

23                 In your questions and the information that you gave  
24 to Mr. Engle -- I don't think he's necessarily dissatisfied  
25 with me, and that's not really the reason for his request for

1 new counsel. The problem is that in the course of this  
2 negotiation -- and I can't get into the details, necessarily,  
3 with Your Honor, but I have gained information or reasonably  
4 believe certain things which will result in possibly and  
5 probably me not being able to put on the defense, from an  
6 ethical standpoint, that Mr. Engle has indicated that he  
7 wants presented in this case.

8 In other words, Judge, I'm handicapped by the  
9 ethical rules, and I might end up in a situation on  
10 December 1st or a week later, even worse, asking the Court to  
11 withdraw for that reason. And, so, that's the nature of the  
12 problem that we have.

13 THE COURT: All right. Let me ask you a question  
14 here. I've been reading the report from Pretrial in this  
15 instance. It indicates that Mr. Engle had been treated for  
16 mental problems until he was 18 years old, and he does have a  
17 history of some really -- some problems; indecent exposure  
18 and things of this nature that are of record.

19 How about having a psychiatric evaluation,  
20 Mr. Krask?

21 MR. KRASK: Your Honor, the Federal Public  
22 Defender's Office has resources to request those types of  
23 examinations. Mr. Colgan, as you've indicated, is a very  
24 capable counsel. He may have already done that in this case.  
25 I know of no reason, based on Mr. Engle's appearances before

1 this court, that he's incompetent or unable to --

2 THE COURT: I'm not even implying that he is. I'm  
3 merely indicating that the report indicated that he had had  
4 some problems when he was -- prior to his 18th birthday.

5 MR. KRASK: I understand that. I guess without more  
6 I don't think that would justify sending him off for a  
7 psychiatric examination at this time.

8 THE COURT: How about you, Mr. Colgan?

9 MR. COLGAN: Judge, it is something that I have  
10 become increasingly concerned about, and --

11 THE COURT: I'm not planning on sending him away.  
12 I'm going to ask Mr. Krask if there's a psychiatrist in this  
13 area that can talk to Mr. Engle and see where we go from  
14 there. I think -- Mr. Krask, haven't we used a psychiatrist  
15 from the area in the past?

16 MR. KRASK: There were two that we've used, I think.  
17 Dr. Pasquale, who filled that role in the past, has passed  
18 away. I believe there's another, but I don't recall the name  
19 off the top of my head, quite frankly.

20 THE COURT: Why don't you do this: I think I want  
21 to have him examined by a psychiatrist just to make sure that  
22 he is fully aware of the consequences, can cooperate with his  
23 attorney. I'm getting a -- when I read this report I  
24 immediately began to wonder. His mother indicated that he  
25 had been treated up until he was 18 years old, so I want to

1 get a psychiatrist merely to testify as to his ability to  
2 understand the nature and consequences of his actions, to be  
3 able to cooperate with his attorney, and that we're not  
4 dealing with somebody who is off in some figment of his  
5 imagination. His mother says he doesn't see things the same  
6 way other people see things, obviously. I don't know what  
7 that all means, but he doesn't have a good sense of  
8 perception.

9           So what I want to do, Mr. Colgan, is have him  
10 evaluated by a psychiatrist, but if he doesn't want to  
11 cooperate with the psychiatrist or if he doesn't want it, I  
12 won't do it. So you tell me, Mr. Colgan.

13           MR. COLGAN: Well, Judge, that goes, I take it, to  
14 the issue of his competency to stand trial and his sanity.

15           THE COURT: That's correct. That's all I'm  
16 interested in.

17           MR. COLGAN: Okay. Judge, I need to take that up  
18 with him. Would the Court -- is this coming in the nature of  
19 a suggestion to counsel, that I obtain this if I'm concerned  
20 about it, or is the Court ordering it?

21           THE COURT: I'm not ordering anything yet. I'm  
22 wondering what concerns you may have with regard to it,  
23 Mr. Colgan. And if you do then I will try to get a  
24 psychiatric evaluation done. I just -- I think Mr. Colgan  
25 might be off in some dream world sometimes.

1 MR. COLGAN: Judge, I'm Mr. Colgan.

2 THE COURT: I mean -- excuse me -- Mr. Engle. Thank  
3 you, Mr. Colgan. Forgive me. I'm constantly getting names  
4 confused.

5 MR. COLGAN: Judge, I think it probably would be  
6 prudent under the circumstances.

7 THE COURT: All right. Mr. Krask, in the next  
8 24 hours do you think you can find me a psychiatrist that  
9 will evaluate him?

10 MR. KRASK: I'll certainly do my best, Your Honor,  
11 and we could submit a proposed order.

12 THE COURT: If Mr. Krask can find one. And,  
13 Mr. Colgan, see if you can agree with Mr. Krask as to who the  
14 psychiatrist might be so that we can get an evaluation of his  
15 ability to cooperate with counsel, to understand the nature  
16 and circumstances of his defense and what the defense is and  
17 so that we get an intelligent response from the defendant.

18 MR. COLGAN: Judge, while we're at it should we  
19 inquire as to sanity at the time of the offense as well?

20 THE COURT: I see nothing to indicate that, but...

21 (There was a pause in the proceedings.)

22 MR. COLGAN: Judge, I guess my feeling is if we're  
23 going to do it let's get it all out and know where we stand.

24 THE COURT: It may be wonderful to get it all done,  
25 but I haven't had any reason to think that he didn't

1 understand the nature and consequences of what he did. Not  
2 necessarily -- he doesn't have to know it was a crime, he  
3 just -- just what he was doing. And there's nothing in this  
4 entire matter of the factual situation that was previously  
5 submitted to the Court and the matters that have come before  
6 the Court which would indicate in any way that he didn't  
7 understand what he was doing, not that he -- whether it was  
8 criminal or not is of no consequence.

9 What is really of consequence, Mr. Colgan, is  
10 whether he understood the nature and circumstances of what he  
11 was doing: First, accusatorily being with a 13-year-old  
12 girl; second, having a video made of a 16-year-old girl. If  
13 he did -- I'm not saying he did or didn't; that's what he's  
14 accused of doing -- and transporting that by bringing it into  
15 the State of Virginia. So the real question, then -- if he  
16 understood he was taking a video and if he understood he had  
17 it with him, tough.

18 Do you see the problem, Mr. Colgan?

19 MR. COLGAN: I do, Judge, but --

20 THE COURT: I don't see anything to indicate that he  
21 wasn't perfectly sane, it's just a question -- the test now  
22 is so hard, Mr. Colgan. All he has to know is that he has to  
23 adhere to what's right. That's about it.

24 I don't mind going for the question of his  
25 competency, but other than that I'm not going for it,

1 Mr. Colgan.

2 MR. COLGAN: I understand, Judge.

3 THE COURT: Unless Mr. Krask wants to do it. If he  
4 joins you, you might do that. What do you think, Mr. Krask?

5 MR. KRASK: Your Honor, frankly, I'd like to think  
6 about it during this 24-hour period that the Court has asked  
7 me to --

8 THE COURT: You've got ten minutes to think about  
9 it. I'm not going to keep holding hearings in this matter.  
10 I want to get it done today, if possible.

11 MR. KRASK: The onus ultimately is on the defense in  
12 this case. The rules provide that if they think that's a  
13 defense they're supposed to assert, under Rule 5.2 they're  
14 supposed to file a notice, and then the Court can react to  
15 that notice and --

16 THE COURT: There's no notice been filed in this  
17 matter.

18 MR. KRASK: Exactly.

19 THE COURT: And I'm not about to start it. So, if  
20 you want I'll take a ten-minute recess. You can make up your  
21 mind one way or the other. But right now all I'm going to do  
22 is to -- I want to get you and Mr. Colgan -- that is, defense  
23 counsel -- to agree on a psychiatrist that I will appoint  
24 to -- and, of course, we'll have to pay for it through the  
25 government process. But other than that, no way, Mr. Krask.

1 Do you want a ten-minute recess to think about it?

2 MR. KRASK: No, Your Honor.

3 THE COURT: I don't have any thoughts about it at  
4 all. I just want to make sure the gentleman is competent to  
5 make the decisions that he's making. When he starts making  
6 decisions that do not seem to be on the best advice of  
7 counsel then it raises a flag.

8 What also raised a flag with me, Mr. Krask, is the  
9 fact that he had been treated for some mental condition until  
10 he was 18. I'm not sure -- what is his age today?

11 How old are you, Mr. Engle?

12 THE DEFENDANT: 32, sir.

13 THE COURT: Well, that's 14 years ago, so I --

14 MR. KRASK: No, Your Honor, I don't need time to  
15 think about it. If the defense isn't going to file such a  
16 notice then I see no reason to go down that road.

17 THE COURT: Thank you very much, Mr. Krask.

18 All right. I'm orally ordering a psychiatric  
19 evaluation. Mr. Colgan, you and Mr. Krask get together with  
20 a psychiatrist and then I will formally enter such an order  
21 appointing that psychiatrist with a limitation on the fees  
22 that may be there. Generally, it's a thousand-dollar  
23 limitation, so I'm not interested in \$10,000 tests. I want  
24 to see if you can find one. Let me know. If not, I can try  
25 to find one, get somebody to do a -- to help us in this



1     respect.  It's awfully hard.  A psychiatric evaluation -- I  
2     just want him to go down, talk to the defendant, conduct any  
3     tests he thinks are necessary for one day, just to determine  
4     his competency to stand trial.  That's all I'm interested in.

5             Anything else that has to be done at this time?  I  
6     will then enter the order, Mr. Colgan, once you and Mr. Krask  
7     agree on the individual to be named.

8             MR. KRASK:  Do we have a time for the October 26th  
9     hearing?

10            THE CLERK:  10:00.

11            MR. KRASK:  10:00?

12            THE COURT:  10:00, October 26th.

13            MR. COLGAN:  Judge, I have a sentencing at 9:30.  
14     Can we push it back?

15            THE COURT:  Yeah, we'll push it back some.  What  
16     time is your sentencing?

17            MR. COLGAN:  9:30, Judge.

18            THE COURT:  Then you should be done by 11:00,  
19     wouldn't you think?

20            MR. COLGAN:  I would think.

21            THE COURT:  Let's set it at 11:00.  That's on a  
22     Monday, anyhow.  I can sleep late.

23            MR. COLGAN:  Judge, what started us on the issue of  
24     the psychological evaluation was the information I imparted  
25     to the Court about possible ethical issues that may end up

1 surfacing at trial, and I haven't filed a motion because I  
2 just found out --

3 THE COURT: Mr. Colgan, don't -- what I'm going to  
4 do is to appoint the psychiatrist to meet and confer with the  
5 defendant to determine, if he possibly can, his competency to  
6 understand the nature and consequences of the offense with  
7 which he's charged and whether he can cooperate with his  
8 counsel. And that's all I'm interested in.

9 MR. COLGAN: I understand.

10 THE COURT: All right? If there's nothing else,  
11 we'll recess. We don't have anything else today, do we?

12 THE LAW CLERK: No, Judge.

13 THE COURT: All right. We'll recess. Thank you.

14 (The hearing adjourned at 10:25 a.m.)

15  
16 CERTIFICATION

17  
18 I certify that the foregoing is a correct transcript  
19 from the record of proceedings in the above-entitled matter.

20  
21 s/s

22 Heidi L. Jeffreys

23  
24 September 21, 2010

25 Date